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**DEC 30 2004**

**OFFICE OF PETITIONS**

In re Application of	:	
James O. Kelley et al.	:	
Application No. 10/757,663	:	DECISION ON RENEWED PETITION
Filed: January 13, 2004	:	UNDER 37 C.F.R. §1.53
Attorney Docket No. sf 53.2-3	:	
Title: MODULAR FURNITURE SYSTEM	:	

This is a decision on the renewed petition filed October 18, 2004 under 37 C.F.R. 1.53, requesting that the above-identified application be accorded a filing date of January 13, 2004, with Figure 43 submitted with the instant petition considered as part of the original disclosure of the application.

The application was deposited on January 13, 2004. However, on April 21, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Omitted Item(s) in a Nonprovisional Application (notice)," stating that the application had been accorded a filing date, and advising applicants that the application appeared to have been deposited without Figure 43. With the instant petition, Petitioner has submitted Figure 43 along with authorization to charge the petition fee to a Deposit Account.

The original petition was submitted on June 1, 2004. A decision was mailed on September 24, 2004, which is hereby **VACATED**.

Petitioner states that although Figure 43 was omitted on filing, it was constructively included through incorporation by reference.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted. It is noted that the application transmittal letter identifies this application as a continuation of a prior application, but fails to list the serial number of the parent. The specification identifies this application as a continuation of application 08/840,960 and sets forth that the disclosure of the parent is incorporated by reference. Section 201.06(c) of the MPEP sets forth, in part:

an applicant may incorporate by reference the prior application by including, in the continuation or divisional application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The incorporation by reference statement can only be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference.

(Emphasis added).

With the renewed petition, Petitioner has submitted the missing figure via an amendment.

As such, the renewed petition under 37 CFR 1.53(b) is **DISMISSED AS MOOT**.

The petition fee of \$130.00 has not been charged to Petitioner's Deposit Account.

**The application file will be forwarded to the Office of Initial Patent Examination (OIPE) for further processing. OIPE will then forward the application to Technology Center 3600 for consideration of the amendment filed concurrently with this renewed petition<sup>1</sup>.**

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.



**Paul Shanowski**  
**Senior Attorney**  
**Office of Petitions**  
**United States Patent and Trademark Office**

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<sup>1</sup> The Examiner will review the amendment for new matter. See MPEP 608.02(h) and 608.04.